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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,100	09/26/2003	Erwin R. John	50124/01101	7113

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FAY KAPLUN & MARCIN, LLP
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EXAMINER

BOUCHELLE, LAURA A

ART UNIT	PAPER NUMBER
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3763

MAIL DATE	DELIVERY MODE
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05/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/672,100

Applicant(s)

JOHN, ERWIN R.

Examiner

LAURA A. BOUCHELLE

Art Unit

3763

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 36-46 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 and 47-49 is/are allowed.
- 6) ☒ Claim(s) 20-35 and 50-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: ANE

DETAILED ACTION

In response to the amendment after final filed 3/10/09, the examiner found applicant's arguments regarding claim 1 convincing, and therefore the finality of the previous action has been withdrawn. The rejection of claims 20-35, 50-52 has been maintained.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 20, 21, 23, 27, 28, 30-35, 50-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reich et al (US 2005/0038371) in view of Suffin (US 6622036). Reich discloses a system for treating the CNS comprising a first 13 and second 12 conduit inserted into a patient's body, the conduits are open to a portion of the patient's CNS with direct access to CSF, the first conduit opens to a first reservoir 40 of material to be introduced into the CSF and the second conduit opens to drain CSF permanently withdrawn from CNS (page 2, paragraph 0014). The device treats neurological conditions that may be brought on by a chemical imbalance by increasing the turnover rate of the CSF thereby removing CFS having a high level or deleterious chemicals and replacing it with CSF of a normal concentration. The second conduit opens into the peritoneal cavity and the flow of CSF is controlled by a second pump 24. The intracranial pressure of the patient is monitored by a sensor 29.
3. Claim 20 differ from Reich in calling for the step of detecting and analyzing brain activity of a patient. Claim 24 differs in calling for the brain activity to be detected using QEEG. Claim 49 calls for the brain activity to be compared to normal brain activity. Suffin teaches a method for assessing brain imbalances comprising the steps of analyzing brain activity to

determine an imbalance using QEEG to determine normal from abnormal brain activity (abstract). Determining abnormal brain activity inherently includes the step of comparing the brain activity to normal brain activity. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Reich to include a brain activity detection unit including QEEG as taught by Suffin to determine normal from abnormal brain activity so that a medical professional can evaluate the treatment method.

4. Claims 22, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reich in view of Suffin as applied to claim 20 above, and further in view of Harper et al (US 6436091). Claims 22, 29 differ from the teachings above in calling for the pump to be an osmotic pump. Harper teaches a method for delivering a pharmaceutical agent comprising an osmotic pump that allows the infusion rate to be adjusted (Col. 2, lines 50-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the pump of Reich in view of Suffin to be an osmotic pump as taught by Harper so that the infusion rate of the device can be adjusted.

5. Claims 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reich in view of Suffin as applied to claim 20 above, and further in view of Brengle et al (US 20030130645). Claims 25, 26 differ from the teachings above in calling for the device to include a plurality of chambers and a plurality of pumps. Brengle teaches a device of delivering medical fluid comprising a plurality of chambers controlled by a plurality of pumps so that the treatment can be tailored to fit the patient's needs (Page 1, paragraph 0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device above to

include a plurality of chambers and a plurality of pumps as taught by Brengle so that the treatment can be tailored to fit the patient's needs.

Allowable Subject Matter

1. Claims 1-19, 47-49 are allowed.

Response to Arguments

2. Applicant's arguments, with regard to the method claims, filed 3/10/09, with respect to Reich in view of Suffin have been fully considered and are persuasive. The rejection of claims 1-19, 47-49 has been withdrawn.
3. Applicant's arguments regarding the system claims have been fully considered but they are not persuasive. Applicant argues that the combination of Reich and Suffin fails to teach a brain activity detection unit for detecting and analyzing a chemical imbalance present in the CSF based on the brain activity of the patient. Applicant further argues that the combination would change the principle operation of Reich. The examiner disagrees with this assertion. First, Suffin teaches the use of QEEG to diagnose brain imbalances. With regard to the system claims, applicant fails to disclose how the brain activity detection unit is incorporated with the other components of the device. The claim does not require that the detected chemical imbalance is treated using the first and second conduits. Therefore, including the detection unit in the device of Reich does not destroy the function of the device. Merely detecting the imbalance does not have an effect on the functioning of the device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763

Laura A Bouchelle
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